

HOUSE BILL REPORT

ESHB 2026

As Passed House:
April 12, 2011

Title: An act relating to creating the industrial insurance rainy day account.

Brief Description: Creating the industrial insurance rainy day account.

Sponsors: House Committee on Labor & Workforce Development (originally sponsored by Representatives Sells and Reykdal).

Brief History:

Committee Activity:

Labor & Workforce Development: 3/22/11, 4/6/11 [DPS].

Floor Activity:

Passed House: 4/12/11, 50-47.

Brief Summary of Engrossed Substitute Bill

- Creates an industrial insurance Rainy Day Account (Rainy Day Account) for Accident Fund and Medical Aid Fund surpluses and provides for transfers to the Rainy Day Account of amounts that are more than 10 percent greater than funded liabilities.
- Provides that if the Director of the Department of Labor and Industries determines to increase rates for the Accident Fund or Medical Aid Fund, the amount of the increase must first be funded from the Rainy Day Account.
- Provides that premium dividends, other than refunds under the retrospective rating plan, may not be distributed and average rates may not be reduced.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Kenney, Miloscia, Moeller, Ormsby and Roberts.

Minority Report: Do not pass. Signed by 5 members: Representatives Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan, Taylor and Warnick.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Joan Elgee (786-7106).

Background:

Under the state's industrial insurance laws, employers must insure through the State Fund administered by the Department of Labor and Industries (Department) or, if qualified, may self-insure. Employers pay into the Accident Fund, which is used to pay time-loss benefits and permanent partial as well as permanent total disability benefits, and the Medical Aid Fund, which pays for medical benefits. Workers also pay into the Medical Aid Fund. The Department classifies industries by risk and sets basic premium rates. The rates must be the lowest necessary to maintain the actuarial solvency of the Accident and Medical Aid Funds in accordance with recognized insurance principles, and must be designed to attempt to limit fluctuations in premium rates.

The Workers Compensation Advisory Committee (WCAC) is a 10-member committee tasked with studying aspects of the workers compensation system. Workers and employers are represented on the committee.

Beginning in 2006, the Legislature directed the State Auditor to conduct annual audits of the State Fund. The State Auditor may contract with firms qualified to perform a financial audit. The WCAC reviews the audit and may make recommendations to the Department concerning: (1) the appropriate levels of a contingency reserve, and (2) when surplus funds exist in the trust funds, the circumstances which the Department should give premium dividends, or similar measures, or temporarily reduce rates.

Summary of Engrossed Substitute Bill:

Legislative findings are made that stability in industrial insurance premium rates benefits both employers and workers. The Legislature further finds that economic and other events may cause benefit costs and premiums collected to change in unanticipated ways. Intent is stated that rather than return surplus funds in the form of rate holidays, dividends, and other returns, surpluses should be deposited into a rainy day account to be used in lieu of a rate increase. Intent is further stated that the Rainy Day Account funds may be held in trust for workers and employers and not be expended for purposes other than industrial insurance benefits and administration of those benefits.

An industrial insurance Rainy Day Account (Rainy Day Account) is created as an industrial insurance trust fund. Earnings are deposited into the Rainy Day Account. The State Investment Board may invest moneys in the Rainy Day Account in the same manner as other industrial insurance funds. When the Director of the Department (Director) finds that the combined assets in the Accident Fund or the Medical Aid Fund are more than 10 percent greater than funded liabilities, the Director must notify the Treasurer and the Treasurer must transfer the excess to the Rainy Day Account.

The Director determines whether to transfer the excess from the Accident Fund, the Medical Aid Fund, or both. If the Director determines to increase average rates for the Accident Fund or Medical Aid Fund, the increase must first be funded from the Rainy Day Account. The Treasurer must separately account for any transfers to and from the Accident Fund and the

Medical Aid Fund. Moneys in the Rainy Day Account may be used only for transfers into the Accident Fund or Medical Aid Fund to avoid premium increases and retain their status as moneys held in trust for purposes of industrial insurance.

The Director must consult with the WCAC in administering the rainy day provisions. The WCAC no longer makes recommendations regarding levels of a contingency reserve, premium dividends, or similar measures, or temporary rate reductions.

In adjusting rates, the Department may not distribute premium dividends, other than refunds under the retrospective rating plan, and may not reduce average rates.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will help stabilize rates. Smoothing is needed to avoid rate volatility. The approach is thoughtful and innovative. Rebates totaling \$750 million have been distributed in the last decade and before 2007 were not shared with workers. If the Department had put money aside, rather than give rebates and a rate holiday, rate increases would not have been needed. Some changes in the bill may be needed. The system is not broken.

(With concerns) The Department has not yet analyzed the bill. Requiring that surpluses be moved is of concern. Inflation will always require an increase in rates.

(Opposed) This is a band-aid bill that does not help business. Bold, substantive reform is needed. Businesses have had to close down and stop certain operations that have high liability. A business had no rate increase in seven years and got a rebate in Oregon while experiencing a 24 percent increase in rates in Washington. The average time loss is 284 days rather than the 120-day nationwide average. The system is not fundamentally sound. The costs affect customers. If employers leave the state, it will be devastating to workers. Predictability and sustainability are needed. The Rainy Day Fund could be swept. Rates will never go down. The bill will cost money.

A fuller discussion is needed. The bill will not help with rate stability. When the surplus is gone, there will be a much higher snap back. This bill masks the underlying problems. The Department is not providing full information on when things are going wrong. Currently, the Department gives back as soon as it can to current ratepayers. Under the bill, however, funds will be used to benefit future ratepayers. The surplus is the contingency reserve, and the WCAC advises on the reserve. The interest income cannot be used because it stays in the account.

Persons Testifying: (In support) Representative Sells, prime sponsor; Rebecca Johnson, Washington State Labor Council; Tara Goode, Washington State Nurses Association; Dave Johnson, Washington State Building and Construction Trades Council; Larry Shannon, Washington State Association for Justice; Craig Soucy, Washington State Council of Fire Fighters; Sharon Ness, United Food and Commercial Workers-Washington State Council; Nicole Grant, Certified Electrical Workers of Washington; Randy Loomans, International Union of Operating Engineers; Sean O'Sullivan, Association of Western Pulp and Paper Workers; and Cody Arledge, Sheet Metal Workers Local 66.

(With concerns) Vickie Kennedy, Department of Labor and Industries.

(Opposed) Jerry Murphy, Greenshields Industrial Supply; Dave Morell, National Grouting Systems, Inc.; Tim Baker, Baker Electric; Frank Riordan, Becker Trucking; Betty Neighbors and Steve Neighbors, Terra Staffing; Larry Nicholas, Accurate Lock; Kris Tefft, Association of Washington Business; Dave Kaplan, Washington Self-Insurers Association; Rick Slunaker, Associated General Contractors of Washington; and Patrick Connor, National Federation of Independent Business.

Persons Signed In To Testify But Not Testifying: (Opposed) Tammie Hetrick, Washington Retail Association; Tom Kwieciak, Building Industry Association of Washington; Scott Dilley, Washington Farm Bureau; and Nancy Hiteshue, Washington Roundtable.